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3. Specific Performance (§ 43*)—Oral Contract to Convey—Part Performance.—That the purchaser of land under a verbal contract delivered a horse to the vendor, and cleared a small tract upon which he sowed crop, rented part of the land, and built a brush fence around the clearing, etc., does not show such part performance as entitled him to specific performance, since adequate compensation may be had in damages.

[Ed. Note.—For other cases, see Specific Performance, Cent. Dig. §§ 135, 136; Dec. Dig. § 43.*]

4. Specific Performance (§ 41*)—Verbal Contract to Convey—Part Performance.—To be subject to specific performance because partly performed a verbal contract to convey must be clear in its terms and clearly proven, the acts of part performance must result from the agreement proved, and the agreement must be so far executed that a refusal of full execution would operate a fraud on plaintiff, and deprive him of compensation.

[Ed. Note.—For other cases, see Specific Performance, Cent. Dig. §§ 120, 121, 124, 129, 133; Dec. Dig. § 41.*]

HAMILTON'S ADM'X *v.* ALLEGHANY ORE & IRON CO.

Nov. 19, 1908.

[62 S. E. 957.]

Master and Servant (§ 118*)—Injuries to Servant—Mining—Falling Stones—Timbering—Safe Place.—In an action against a master for injuries to a miner, held, that defendant's failure to extend the timbering over the place where decedent worked was not negligence.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 209; Dec. Dig. § 118;* Mines and Minerals, Cent. Dig. § 219.]

MILTON'S ADM'X *v.* NORFOLK & W. RY. CO.

Nov. 19, 1908.

[62 S. E. 960.]

1. Appeal and Error (§ 614*)—Record—Certification of Evidence—Sufficiency.—Where a bill of exceptions recited that defendant demurred to the evidence set forth, followed by the words "Here insert stenographer's transcript of the evidence," and where the judge certified that that was the evidence and the bill of exceptions was signed

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

by the judge and attested by the clerk, followed by a transcript of the evidence certified by the clerk as a true transcript of the evidence, the evidence was sufficiently certified to the court on writ of error.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 2713; Dec. Dig. § 614.*]

2. Trial (§ 139*)—Questions for Jury—Weight of Evidence.—Where, on a demurrer to the evidence, the evidence is such that a jury might have found a verdict for the demurred, or where reasonably fair-minded men might differ about the question, the decision must be against the demurrer.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 338; Dec. Dig. § 139.*]

3. Evidence (§ 120*)—Burden of Proof—Extent of Burden.—Plaintiff, in an action for personal injury, is not bound to prove his case beyond a reasonable doubt any more than in any other civil action, but is only required to make out a *prima facie* case, and make it appear to be more probable that the injuries were the proximate result of defendant's negligence than from any other cause.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 224-228; Dec. Dig. § 120.*]

ROANOKE RY. & ELECTRIC CO. v. YOUNG.

Nov. 19, 1908.

[62 S. E. 961.]

1. Appeal and Error (§ 1058*)—Review—Harmless Error—Facts Otherwise Established.—Where the trial court refused to permit the stenographic notes of the testimony of a witness on a former trial to be read in evidence, but permitted the stenographer to give the testimony by using his notes to refresh his memory, the exclusion of the stenographic notes was not prejudicial.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4195, 4200-4206; Dec. Dig. § 1058.*]

2. Appeal and Error (§ 843*)—Review—Questions Reviewable—Moot Questions.—The Supreme Court of Appeals will not pass upon a question the decision of which is not necessary to the disposition of the cause.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3331-3341; Dec. Dig. § 843.*]

3. Street Railroads (§ 114*)—Injury from Collision—Actions—Evidence—Sufficiency.—In an action against a street railroad for in-

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